

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BOARD OF TRUSTEES OF THE LOCAL)
295/LOCAL 851 – I.B.T. EMPLOYER)
GROUP PENSION TRUST FUND and the)
BOARD OF TRUSTEES OF THE LOCAL)
295/LOCAL 851 – I.B.T. EMPLOYER)
GROUP WELFARE FUND,)

Case No. 08-525 (LAK) (FM)

Plaintiffs,)

vs.)

EMPIRE FREIGHT SYSTEMS CORP.,)

Defendant.)

MOTION FOR ENTRY OF DEFAULT

To: CLERK OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

Please enter the default of defendant Empire Freight Systems Corp. (“Empire Freight”) pursuant to Rule 55(a) of the Federal Rules of Civil Procedure for failure to plead or otherwise defend the above-captioned action as fully appears from the Court file herein and from the attached affidavit of Rachel S. Paster.

DATED: March 20, 2008

CARY KANE LLP



Rachel S. Paster
1350 Broadway, Suite 815
New York, NY 10018
(212) 868-6300

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Defendant.)

CLERK’S CERTIFICATE OF DEFAULT

I, J. Michael McMahon, Clerk of the United States District Court for the Southern District of New York, do hereby certify that the docket entries in the above-entitled proceeding indicate that the summons and complaint herein were filed on January 22, 2008 and that defendant Empire Freight Systems Corp. was served with copies of the Summons and Complaint on January 28, 2008. I further certify that the docket entries indicate that the defendant has not filed an answer or otherwise moved with respect herein and that the time to answer or move has expired. The default of defendant is hereby noted.

Dated: New York, New York
March ___, 2008

J. Michael McMahon

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PLAINTIFFS' STATEMENTS OF DAMAGES FOR JUDGMENT BY DEFAULT

Unpaid Welfare Fund Contributions for the period April 2006- January 2008	\$76,372.50
Unpaid Pension Contributions for the period February 2006-January 2008	\$38,866.00
Interest on unpaid and late-paid Welfare Fund contributions at prime rate from the date due through March 31, 2008	\$13,880.09
Interest on unpaid and late-paid Pension Fund Contributions at prime rate from the date due through March 31, 2008	\$5,688.83
Liquidated Damages of 20% of Unpaid Contributions	\$23,047.70
Attorneys' Fees	\$3,618.75
Costs and Disbursements: Clerk's Fee- \$350.00 Service of Process- \$242.00	\$446.00
TOTAL	\$161,919.87

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Plaintiffs,

vs.

EMPIRE FREIGHT SYSTEMS CORP.,

Defendant.

DEFAULT JUDGMENT

This action having been commenced by the filing of a Summons and Complaint on January 22, 2008, the Summons and Complaint having been served upon defendant Empire Freight Systems Corp. on January 28, 2008, and proof of service of the Summons and Complaint having been filed on January 31, 2008, and defendant having failed to answer or otherwise move with respect to the Complaint and the time therefore having expired;

NOW, on motion of Cary Kane LLP, attorney for the plaintiffs, by Rachel Paster, Esq., it is:

ORDERED, ADJUDGED AND DECREED, that plaintiffs, Trustees of the Local 295/Local 851 – I.B.T. Employer Group Pension and Welfare Trust Funds, in their fiduciary capacity for the Funds, have judgment against defendant in the amount of \$161,919.87, consisting of \$76,372.50 in due and unpaid contributions to the Welfare Fund from April 2006 through January 2008, \$13,880.09, in interest on the unpaid and late paid contribution to the Welfare Fund; \$38,866.00 in due and unpaid contributions to

the Pension Fund from February 2006 through January 2008, \$5,688.83 interest on the unpaid and late-paid contributions to the Pension Fund; liquidated damages of \$23,047.70, attorneys' fees of \$3,618.75 and costs of this action of \$446.00, all as required by Section 502 of ERISA, 29 U.S.C. §1132, and it is further

ORDERED ADJUDGED AND DECREED that interest continue to accrue on the unpaid contributions at the prime rate from the date judgment is entered until the judgment is paid.

Dated: Brooklyn, New York
_____ 2008

United States District Judge